

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FTCA Flint Water Cases

Civil Case No. 17-11218
Honorable Linda V. Parker

This Order Relates to:
Kathleen Seniff v. EPA

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ORDER

On August 31, 2018, a lawsuit alleging violations of the Federal Tort Claims Act was filed against the United States Environmental Protection Agency. Mrs. Kathleen Seniff was among the individuals named as a plaintiff in the lawsuit. On July 19, 2023, counsel for Mrs. Seniff filed a document noting her death. (ECF No. 228.)

The question of whether a federal civil rights claim survives a plaintiff's death is a question of state law. *See Robertson v. Wegmann*, 436 U.S. 584, 588-89 (1978). Under Michigan law, “[a]ll actions and claims survive death” of the injured person during the pendency of the action. *See Mich. Comp. Laws* § 600.2921.

Federal Rule of Civil Procedure 25(a)(1) provides that if a party dies and the claim is not thereby extinguished, the court may, on motion, order substitution of the proper parties. “A motion for substitution may be made by any party or by the decedent’s successor or representative.” Fed. R. Civ. P. 25(a)(1). Rule 25(a)(1)

permits a motion for substitution to be made “within 90 days after service of a statement noting the death[.]” If such a motion is not timely filed, “the action by or against the decedent must be dismissed.” *Id.*

Two steps are required for the 90-day period to commence. “First, the notice of death must be made upon the record.” *Lawson v. Cty. of Wayne*, No. 11-11163, 2012 WL 5258216, at *2 (E.D. Mich. Oct. 23, 2012) (quotation marks and citations omitted). Second, the suggestion of death must be served upon the parties, as provided in Rule 5, and upon ‘nonparties,’ as provided in Rule 4.” *Id.* (quotation marks, citations, and emphasis omitted). The first step has been satisfied by counsel’s filing.

Accordingly, within **30 days**, Plaintiffs shall (i) serve or cause to be served the Suggestion of Death on Mrs. Seniff’s non-party successor(s) or representative(s), and file proof of such service with the Court, or (ii) notify the Court of their efforts to locate Mrs. Seniff’s successor(s) or representative(s) and to serve the notice of her death.

IT IS SO ORDERED.

s/ Linda V. Parker

LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 20, 2023